IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 809 OF 2004

Bharati Vidyapeeth & Anr..... ... Petitioners.

Versus

Smt.Nazir Mohammad Hanif Mujawar..... Respondent.

Mr. A. V. Anturkar i/by Mr. S.P.Pawar
for the Petitioners.

Ms.Anjali Helekar for the Respondent.

CORAM : S. A. BOBDE, J.

DATED : 21ST MARCH, 2005.

P.C.:

Rule.

2. Learned Counsel appearing for respondent waives service of rule. By consent, rule made returnable forthwith and taken up for final disposal.

3. The petitioner No.1 is a deemed University and is aggrieved by the order passed by the Presiding Officer of the Tribunal established under the Maharashtra Universities Act, 1994 holding that the petitioner is subject to the jurisdiction of the Tribunal under that

Act since the declaration that the petitioner is a "deemed university was caused not by any state legislature as such but by a Notification under the orders of His Excellency the Honourable Governor of the State". Mr. Anturkar, learned Counsel for the petitioners, submits that the declaration of the petitioner as a deemed university is under a Notification dated 28th July, 2000 in exercise of powers under Section 3 of the University Grant Commission Act, 1956. The observation of the Tribunal, therefore, is not correct and the Tribunal would have no jurisdiction. I, however, find that the learned Tribunal was led to pass this order on the basis of the statement made on behalf of the petitioners. But having regard to the settled position in law that jurisdiction cannot be conferred by consent and having regard to the Notification which is apparently contradictory to the statements made by the petitioners, I consider it appropriate in the interest of justice to set aside the order to the extent that the Tribunal has jurisdiction to determine the dispute which is an employer and employee dispute under the provisions of the Maharashtra Universities Act, 1994. The Tribunal shall decide the matter on jurisdiction afresh in accordance with law.

4. It appears that the Tribunal has decided to consider another question of jurisdiction as a preliminary issue. I consider it appropriate in the interest of justice to direct the Tribunal to try the question raised in this petition and referred to above along with the other questions as a preliminary issue.

5. Rule made absolute in the above terms. The Tribunal shall decide the matter uninfluenced by any observations made by this Court.

6. Having regard to the statement made by the petitioner No.1 itself, which led the Tribunal to pass the impugned order and the subsequent act of the petitioner of challenging the order passed on the basis of the position taken by it, it is clear that the respondent employee had to defend the matter in this Court. In the circumstances, the petitioners shall pay costs in the sum of Rs.5,000/- to the respondent.

7. This writ petition is disposed of, accordingly.

Sd/-

(S. A. BOBDE, J.)